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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,927	09/15/2000	Marvin J. Slepian	MJS 101	3540

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EXAMINER

KREMER, MATTHEW J

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 02/06/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/662,927

Applicant(s)

SLEPIAN, MARVIN J.

Examiner

Matthew J Kremer

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 19, 22, 23, 27, 28 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9 and 33 is/are rejected.
- 7) ☒ Claim(s) 6-8, 19, 22, 23, 27, 28, and 30-32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 9, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,505,710 to Collins. Collins et al teaches a sensor (Freon 11) which directly interacts with the implanted device through the one actuator (diaphragm that causes expulsion of the drug). (column 4, lines 46-50 of Collins). In regard to claims 2 and 3, a memory chip is disclosed, which is considered a data storage means. (column 4, lines 20-27 of Collins). In regard to claims 4-5, a telemetry means is disclosed. (column 5, lines 49-62 of Collins). In regard to claim 9, the sensor detects a change in temperature in the device caused by the heater. (column 4, lines 46-50 of Collins). In regard to claim 33, an override capacity is disclosed, which means the sensor and actuator are configured for control by an external device. (column 6, lines 35-43 of Collins).

Response to Arguments

3. Applicant's arguments with respect to claims 1-5, 9, and 33 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

4. Claims 6-8, 19, 22, 23, 27, 28, and 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter. The prior art does not teach or suggest “means for communication to one of a series of nested loops of information exchange,” “an external input connected through loops to effectuate change in the device from the at least one actuator,” “monitoring means configured for position external to the patient,” “transmitting and receiving means to the one or more sensors,” “means for remotely accessing the data,” “means for transmitting or receiving data from a computer or phone communication means,” “measuring fouling of the device or at least one sensor over time,” “at least one sensor is configured to measure protein deposition or formation of a bacterial film on a biliary stent, increase in calcification of a urinary stent, and neointimal thickening of an arterial stent,” and “one or more sensors configured for communicating information to the monitoring means and to each other, and configured for communicating commands to the actuator.”

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 4,705,503 to Dorman et al. discloses an implanted device with sensors that detect a metabolite and an actuator (valve) that responds to the sensor .

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kremer whose telephone number is 703-605-

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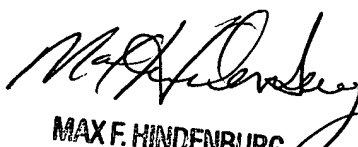
0421. The examiner can normally be reached on Mon. through Fri. between 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 703-308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew Kremer
Assistant Examiner
Art Unit 3736



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